

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 101A.5, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal Administration," and to adopt new Chapter 235, "Commercial Explosive Licensing," Iowa Administrative Code.

During 2008, discussions were undertaken between the State Fire Marshal and the Iowa Limestone Association, which is the trade association representing most commercial explosive licensees in the state, to prepare to rewrite and more systematically codify requirements for commercial explosive licenses issued by the Fire Marshal. Pursuant to these discussions, Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7312B** proposing the adoption of new Chapter 235, "Commercial Explosive Licensing," and a public hearing on the proposed rules was held on December 9, 2008. As commercial explosive licenses expire on and are required to be renewed by January 1 each year, the plan had been to adopt the rules Emergency After Notice after the public comment period had ended, in order for the new rules to apply to licenses issued for calendar year 2009. However, after the public comment period had lapsed, it became apparent that additional work on the rules was needed before they were adopted. Consequently, the rules proposed during 2008 were never adopted. Because the Notice of Intended Action published on November 5, 2008, has now expired, that notice is being terminated in a Notice of Termination published herein as **ARC 8154B** and replaced by this new Notice of Intended Action.

Iowa Code section 101A.2 establishes licensing of commercial explosives operations and users of explosives for commercial purposes. The rules for this program have been in the general rules of the Fire Marshal, 661—Chapter 5, and are now being moved to a separate chapter. This is part of a more general effort to reorganize and renumber the rules of the Department of Public Safety to make them more accessible and understandable to the public and to those subject to the provisions of the rules.

The rules proposed here differ significantly from those that are currently in effect, primarily in that the proposed rules provide for licensing of individual blasters as well as commercial explosive businesses. The statute authorizes the licensing of individual blasters, but this has not previously been implemented.

A public hearing on these proposed amendments will be held on October 13, 2009, at 9 a.m. in the First Floor Public Conference Room (Room 125) in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views concerning these amendments at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing are requested to contact the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; or by telephone at (515)725-6185 at least one day prior to the hearing, although any person who appears at the hearing will be afforded an opportunity to speak.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, by telephone, or in person at the above address by 4:30 p.m. on October 13, 2009. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on October 13, 2009.

These amendments are intended to implement Iowa Code chapters 101A, 252J and 272D.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **661—5.7(17A,101A)**, **661—5.851(101A)**, **661—5.865(101A,252J)** and **661—5.866(252J)**.

ITEM 2. Adopt the following new 661—Chapter 235:

CHAPTER 235
COMMERCIAL EXPLOSIVE LICENSING

661—235.1(101A) Licensing program established. A commercial explosive licensing program is hereby established in the fire marshal division. The program shall issue licenses to commercial explosive firms and to individual blasters as provided in this chapter.

235.1(1) The commercial explosive licensing program is located at the following address:

Commercial Explosive Licensing Program

Fire Marshal Division

Iowa Department of Public Safety

215 East 7th Street

Des Moines, Iowa 50319

The program may be contacted by mail or in person at this address.

235.1(2) The program may be contacted by telephone at (515)725-6145, by fax at (515)725-6172, or by electronic mail at fminfo@dps.state.ia.us.

661—235.2(101A) Licenses required. Except as specifically exempted by another provision of state or federal law, any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment shall be required to hold a current commercial explosive business license issued pursuant to this chapter. Any individual, except as specifically exempted by another provision of law, who conducts blasting or is in charge of or responsible for the loading and firing of any explosive material shall be required to hold a current individual blaster license issued pursuant to this chapter. An individual blaster license shall not be required to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives. An individual blaster license is not required for a person who is the owner of a sole proprietorship which holds a commercial explosive license in order for that person to engage in blasting.

661—235.3(101A) License application process.

235.3(1) Anyone wishing to obtain an application for a commercial explosive business license or an individual blaster license may obtain a copy of the required application by contacting the commercial explosive licensing program as specified in rule 661—235.1(101A).

235.3(2) A completed application for a license shall be submitted to the commercial explosive licensing program at the address specified in subrule 235.1(1). All information requested on the application shall be provided prior to the processing of the application.

235.3(3) Each license application shall be accompanied by a \$60 fee for each license for which application is being made, paid by check or money order made payable to the Iowa Department of Public Safety. If the application is being submitted later than January 31 of a given year, then the fee for each license shall be \$5 per month for each month remaining in the calendar year, including the month in which the application is submitted.

235.3(4) Each license issued shall expire on December 31 of the year in which it is issued, except that a license issued in December of any year shall expire on December 31 of the following year.

661—235.4(101A) Issuance of commercial explosive business license. A commercial explosive business license shall be issued only if all of the following conditions have been satisfied:

235.4(1) All items required on the application have been completed, and any items the fire marshal deems necessary to verify have been verified and found to be true.

235.4(2) For purposes of this rule, “owner” means a person with an ownership interest in the commercial explosive business seeking a license who is either actively engaged in the business or has an ownership stake of 10 percent or more of the business, or both.

235.4(3) No owner or manager of the business for which commercial explosive licensure is sought nor any person who will have, at any time, possession of explosives in the course of employment with the prospective business licensee:

- a.* Has been convicted of a felony or any offense involving explosives or firearms;
- b.* Has been previously disqualified from being licensed to handle explosives in this or any other state. The fire marshal may grant a license to a person previously disqualified if the fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c.* Is an unlawful user of or is addicted to controlled substances;
- d.* Has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

235.4(4) The business has at least one owner or employee licensed as an individual blaster, unless the business is a sole proprietorship in which the owner is the only person involved in the business who will engage in blasting.

661—235.5(101A) Issuance of individual blaster license. An individual blaster license shall be issued only if all of the following conditions have been satisfied:

235.5(1) The applicant is an employee of a licensed commercial explosive business.

a. If, after an individual blaster license is issued, such employment ceases, the employing business and the individual blaster shall each notify the fire marshal within three business days of the final day of employment that the employment has ceased, and the individual blaster license shall be suspended until the individual blaster is again employed with a licensed commercial explosive business.

b. Upon reemployment, the employer shall notify the fire marshal that the individual blaster is again employed with a licensed commercial explosive business, and the fire marshal shall reinstate the individual blaster license as soon as practical, provided that the individual blaster is not disqualified from holding a license pursuant to any provision of this chapter.

c. If the fire marshal finds that an individual blaster is disqualified from holding a license, the fire marshal shall revoke the license.

235.5(2) All items required on the application have been completed and any items the fire marshal deems necessary to verify have been verified and found to be true.

235.5(3) The applicant is not or has not been:

- a.* Convicted of a felony or any offense involving explosives or firearms;
- b.* Previously disqualified from being licensed to handle explosives in this or any other state. The fire marshal may grant a license to a person previously disqualified if the fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c.* An unlawful user of or addicted to controlled substances; or
- d.* Adjudged mentally incompetent at any time by any court or committed by any court to any mental institution, or has not received inpatient treatment for any mental illness in the past three years or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

235.5(4) The applicant has satisfactorily completed training approved by the fire marshal for the handling and use of explosives. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The fire marshal may accept related job experience of 640 hours or more in lieu of training if the experience is documented by a sworn affidavit provided by the employing commercial explosive business licensee.

EXCEPTION: The fire marshal may issue an individual blaster license to a person licensed or certified as a blaster in another state, provided that the fire marshal finds that the requirements for licensing or certification in the other state are comparable to those provided for in this rule.

235.5(5) The applicant is 21 years of age or older.

661—235.6(101A) Inventory and records.

235.6(1) Each licensed commercial explosive business shall maintain records to show amounts of explosive material on hand at the beginning and end of each working day and quantities dispensed and to whom. The business shall conduct physical inventories at least once annually. Anytime a shortage appears that is in excess of limits established by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the shortage shall be reported within 24 hours to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal Form 4712 (Department of Treasury, Internal Revenue Service) to be completed, a copy of which shall be sent to the commercial explosive licensing program, as specified in rule 661—235.1(101A). Inventory records shall be retained for five years after the date for which the activity is recorded and shall be made available upon request of the fire marshal.

235.6(2) Each licensed individual blaster shall maintain a daily record of all explosive materials received and fired or otherwise disposed of by the individual blaster. Such records are the property of the business license holder, who shall retain them for five years and make them available to the fire marshal upon request.

235.6(3) Any loss, theft, or unlawful removal of explosive materials shall be reported within 24 hours to the Bureau of Alcohol, Tobacco, Firearms and Explosives, to the fire marshal and to the local law enforcement agency.

235.6(4) Any accident involving explosive materials that causes an injury to a person which requires medical attention or that causes damage to property beyond the limits of the property on which the blasting is being conducted or to property for which the owner has not provided a written waiver to the blasting operation shall be reported promptly to the fire marshal.

661—235.7(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.

235.7(1) The fire marshal may refuse to issue a commercial license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

- a. Finding that the applicant or licensee is not of good moral character and sound judgment.
- b. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.
- c. Finding that the applicant or licensee falsified information in the current or any previous license application.
- d. Finding that the applicant or licensee has been adjudged mentally incompetent at any time by any court or committed by any court to any mental institution or has received inpatient treatment for any mental illness in the past three years or received treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely, both toward themselves and others.
- e. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A, this chapter, or 661—Chapter 231.
- f. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code chapter 252J.

235.7(2) An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked for a reason other than receipt of a certificate of noncompliance from the child support recovery unit may appeal that action pursuant to 661—Chapter 10, except that wherever “commissioner of public safety” or “department of public safety” appears, “fire marshal” shall be substituted. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 661—235.7(101A,252J). Procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

235.7(3) The fire marshal shall notify the employing commercial explosive business licensee of the denial, suspension, or revocation of an individual blaster license.

661—235.8(101A,252J) Child support collection procedures. The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

235.8(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

235.8(2) The effective date of revocation or suspension of a license or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee or applicant.

235.8(3) Licensees and applicants for licensure shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

235.8(4) All fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

235.8(5) In the event a licensee or applicant files a timely district court action following service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation, suspension or denial of the issuance or renewal of a license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

661—235.9(101A,272D) Suspension or revocation for nonpayment of debts owed state or local government. The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

235.9(1) The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

235.9(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service of the notice upon the licensee.

235.9(3) Licensees shall keep the board informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

235.9(4) All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

235.9(5) In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension of

the license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

235.9(6) Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the board or within the department of public safety.

NOTE: The procedures established in rule 661—235.9(101A,272D) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

661—235.10(101A) Inspections and inspection fees. Each permanent location at which a commercial explosive licensee stores explosives is subject to an inspection annually, and to reinspections if needed to ensure correction of any violations. The inspection fee shall be \$100 per site inspected, which shall cover the initial inspection and one reinspection, if needed. The fee for each additional reinspection shall be \$50.

These rules are intended to implement Iowa Code chapters 101A, 252J, and 272D.